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 MERRITT COLLEGE
 and SHIRLEY MACK

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH SANTOS

Plaintiff,

vs.

MERRITT COLLEGE, SHIRLEY MACK, an
 individual and DOES 1-10, inclusive,

Defendants.

CASE NO. C 07 5227 EMC

**DEFENDANTS' NOTICE OF
 MOTION AND MOTION TO
 DISMISS PLAINTIFF'S FIRST
 AMENDED COMPLAINT**

Date: December 12, 2007
 Time: 10:30 a.m.
 Judge: Hon. Edward M. Chen
 Location: Courtroom C, 15th Fl.

Accompanying Papers: Memorandum
 of Points and Authorities in Support of
 Motion to Dismiss and [Proposed]
 Order

PLEASE TAKE NOTICE that on Wednesday, December 12, 2007 at 10:30 a.m. or as soon thereafter as the matter may be heard in the above-entitled court, Defendants MERRITT COLLEGE and SHIRLEY MACK, will and hereby do move the Court to dismiss Plaintiff ELIZABETH SANTOS' First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

This motion is made on the following grounds. First, Plaintiff's claims for violation of the Fair Employment and Housing Act ("FEHA") fail as a matter of law, as Plaintiff is not currently, nor has she ever been, an "employee" of Defendant MERRITT COLLEGE. Second,

1 Plaintiff's claims for "failure to prevent, investigate and remedy harassment" and for age
 2 discrimination in violation of 42 U.S.C. section 1981 ("Section 1981") fail as a matter of law as
 3 Section 1981 is strictly limited to claims of racial discrimination. Third, Plaintiff's claim for
 4 race discrimination in violation of Section 1981 fails as a matter of law because public entities
 5 are not "persons" subject to suit, and an individual cannot be held liable for "discrimination"
 6 under the statute. Fourth, Plaintiff's claims for negligent misrepresentation and breach of
 7 implied-in-fact contract fail as a matter of law because the Tort Claims Act abolished all
 8 common law and judicially declared forms of liability against public entities. Fifth, Plaintiff's
 9 claim for intentional infliction of emotional distress fails as a matter of law because Plaintiff's
 10 First Amended Complaint does not plead compliance with the claim presentation requirements of
 11 the Tort Claims Act.

12 The motion will be based on this Notice of Motion and Motion, the Memorandum of
 13 Points and Authorities filed herewith, and the pleadings and papers filed herein.

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 15 Dated: October 17, 2007

GORDON & REES LLP

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 17 By: /s/ Alyson Cabrera
 18 ALYSON CABRERA
 19 Attorneys for Defendants
 20 MERRITT COLLEGE and
 21 SHIRLEY MACK
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